NO. 83-1418

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In the
Supreme Court of the United States

October Term, 1983

City of Little Rock, et. al.,
Petitioners,

v.

Johnnie Gilbert, et. al.,
Respondents.

RESPONSE TO A PETITION
FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPENDIX

VOLUME II

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APPENDIX A

NO. 83-1418

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RESPONSE TO A PETITION
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VOLUME II

APPENDIX A

TESTIMONY OF
CLARENCE HUNTER
(T. 289, Line 6 through 295, Line 17)

Q. State your name, please.

A. Clarence Hunter.

Q. Are you employed by the city of Little Rock Police Department?

A. Presently; to be retired soon.

Q. When is your retirement to be effective?

A. Approximately the 17th of January.

Q. What is your current rank?

A. Assistant Chief of Police.

Q. Are you the only person that holds that position?

A. No. We have Chief Hale also holding the position of assistant chief.

Q. There are two assistant chiefs?

A. That is correct.

Q. Prior to your occupying the position of assistant chief, along with Assistant Chief Hale, has there ever been, to your knowledge, a situation where you had two assistant chiefs?

A. Not to my knowledge.

Q. Who was made assistant chief first?

A. Chief Hale.

Q. In reference to this particular lawsuit, we are dealing with the years from '75 to the present. I know you have been employed by the city of Little Rock for much longer than that. When did you come on board?

A. June 14, 1958.

Q. And when did you make sergeant?

A. 1968.

Q. And lieutenant?

A. 1971.

Q. When did you start to—when did you apply for captain, for example?

A. 1972—I'm not sure of that, but I believe I started in 1972, and I do know that I did apply for captain in 1973.

Q. Did you encounter any what you would consider to be racial problems in that promotion from lieutenant to captain?

A. Yes, I do feel that I did receive some discriminatory practice during that time.

THE COURT: I think it would be helpful to the Court if you went back and review when he started with the Police Department, and then how long it took him in each spot before he got up to his present position.

Q. (Mr. Duncan, continuing) Again, what was your starting date with the Police Department?

A. June 14, 1958.

Q. And from that date forward, how long was it before you became sergeant?

A. In 1968 I became sergeant. I had taken the examination prior to that, but I failed, and then the following year, in '68, I took the examination and I was promoted to sergeant. I ranked number 2 on the list.

Q. What kind of conditions did we have in the 60's, the late 60's, for example, at the Little Rock Police Department?

A. We had racial problems.

Q. Do you recall any situation, for example, where black officers were assigned to one vehicle during that time?

A. Yes. In '59, we began driving "a" police car. Two of us were assigned to work from Fifteenth and Pulaski east; that was Officer Berg and I. I worked with him for approximately six months, and then after that another person was assigned to work with him and I was reassigned to the Ninth Street area, which was the area that black officers were assigned to work.

Q. Were black officers, during that time, assigned to any other areas to work besides Ninth Street and—

A. No, you had the one car that worked from Fifteenth and Pulaski, and the reason that we were assigned to work the Fifteenth and Pulaski Street was that they had a tavern on the corner—I believe it would be 1424 Pulaski—and they had some problems there with drunks and the chief at that time, Chief Brians, assigned—correction; Chief Smith—assigned us to rid that community of those problems. Of course, we were to drive to the east end, look around, and then go back to Fifteenth and Pulaski. In other words, it wasn't enough to keep us there all the time. Therefore, he allowed us to go further east to look at the eastern part of the city.

Q. Coming forward, when did you get promoted to lieutenant?

A. 1971.

Q. So, in '68, sergeant; '71, lieutenant?

A. That is correct.

Q. How many times did you take the lieutenant's exam?

A. One time, I believe, and I was promoted.

Q. Let's go forward to captain.

A. Okay. In 19—I'll have to deal with '73 because I'm not certain of '72. In 1973 the Civil Service Commission announced

an examination for captain. They stated that only those living within the city would be eligible for promotion to captain. Three of us passed the examination. That was Chief Hale, Lieutenant Richard Duran, and myself. At the time, I was the only one living in the city. We went for oral interviews. After the oral interviews, Jess Hale was listed as number 1 on the eligibility list and I was listed as number 2. I thought that was unfair, so I went to an attorney and the attorney wrote the Civil Service Commission a letter. The Civil Service Commission then froze the list for the year '73. There were no promotions for that year.

In '74, I took the examination but I did not study for the examination. I gave my book to Chief Hale and told him that I thought that he should have it because I didn't think it would do me any good to study for it. So, I didn't study for it, but I did take the examination. I did not make a very good grade. Oh, I made in the 80's, but it wasn't as good as what I had made the year before.

Q. Why did you give your book to Captain Hale and say that you didn't think it would do any good for you to study?

A. I just didn't think that I would make it under Chief Weeks.

Q. Okay. Continue.

A. From that '74 list, four people were promoted to captain. I had been ranked number 5, so I was not promoted. Of course, in 1975 I took the examination and I was ranked as the number 1 person, but no one was promoted that year.

In 1976, I again took the examination and I was ranked number 3 on that list. If I recall, no promotions were made that year.

Q. Okay. Did you feel or relate the failure to promote you when you were ranked number 1 in '75 was related to your race?

A. I felt so. I felt that—if I may, I would like to go back. I felt that the promotion of the four people in the year '74 was to lock in enough captains where I would never be promoted, because I didn't see the need for the four captains that they promoted.

Q. So, in '75 you ranked number 1 on the list?

A. Right. Well, I had been left number 1 on the prior list anyway, and so they listed me as number 1 on the list in 1975.

Q. But you did not get promoted that year?

A. I did not get promoted.

Q. Did you relate that to race?

A. I felt that it was related to my race.

Q. What about 1976?

A. In 1976, I took the examination and I was ranked number 3. I felt that that was totally unfair, so that is when I wrote the Civil Service Commission and asked that they re-evaluate that decision of the list that they had certified for the year 1976. They wrote me back and said that decision would stand.

Q. What about 1977? Did you again write anyone on the Civil Service Commission?

A. That is when it was. I wrote it in—see, the list was certified in '76, but I did not write my letter until 1977.

Q. Okay. Now, in reference to these men that are in this court as plaintiffs and intervenors,—and a lot of them are sitting around here—do you know these men?

A. Yes, I do.

Q. Do you feel that they have encountered problems in promotion because of race?

A. I feel that the chief at the time did not want blacks promoted.

Q. Okay. Since you have encountered problems that you relate to race, do you feel that these guys have also encountered problems under the promotion system that you know exists at the Little Rock Police Department?

A. Yes, I do.

ADDITIONAL TESTIMONY OF CLARENCE HUNTER
(T. at 1614, Line 17 through 1615, Line 22)

Q. Okay. Now, were you still making less than Jess Hale, the other assistant chief?

A. Yes, I was.

Q. Let me ask you this, because I think it's critical. Who had more seniority, you or Assistant Chief Hale?

A. I had more seniority in the department.

Q. How long had you been in the department or worked for the department more than him?

A. I came in '58 and I believe Chief Hale came in 1962.

Q. Okay. So, you had actually been on the force four years longer than him?

A. That is correct.

Q. And you were holding the assistant chief's position, and did you have the same or similar responsibilities as he did?

A. I thought they were equal.

Q. And you were making less than him when you were put in the assistant chief's position?

A. Yes.

Q. Was there ever a time when you were finally raised to where you were making what he was making?

A. Yes, sir. December 29, 1980, we received equal raises and I was brought up to the level of Chief Hale.

Q. So, from August of 1979, when you were promoted to assistant chief, to December of 1980, Assistant Chief Hale, the white that held the comparable position to you, was making more money than you that entire time?

A. That's correct.

Q. And there was even a time when the top-paid captain was making more than you, and you were higher in rank?

A. That's right.

APPENDIX B

APPENDIX B

TESTIMONY OF LES HOLLINGSWORTH
(T. 479, Line 17, through 480, Line 25)

Q. You testified on direct examination that you supported Chief Simpson in his attempt to become Chief of Police in 1977.

A. I thought he was the best candidate for the position.

Q. And, based on your observations both before and after that decision, has there been a significant change in the Police Department since Chief Simpson took over?

A. Yes, I would say that there has been a change, Mr. Lyon. I considered the Police Department before Chief Simpson's administration to be—I did not feel safe in that place. I did not feel safe in having my clients there. I thought that the Police Department as a whole was generally just insensitive to blacks and was almost like storm troopers, in a way, in how they related to the black community. And I think that that attitude did not change drastically until sometime in the late seventies. I think that blacks were regarded as mere chattels by the police.

Now, that's not to say that all 200 policemen were like that. I've met—some of the finest people I know are in the Little Rock Police Department. But I know that there was a captain who was very sensitive to what was going on in the black community. And he kept his mouth shut; he was afraid to speak out because he felt that thepeer group pressure would be too much for him to handle. And he even thought that there might be some attempt to harm him if he spoke out too much about what was going on, as far as black promotions and blacks were treated in general. And so, he kept his mouth shut. But I know he did not feel good about it. He often related how it made him feel less than a person to do that. And when his 20 years came up to retire, he retired; he got out of it.

ADDITIONAL TESTIMONY OF LES HOLLINGSWORTH (T. 483, Line 1 through 484, Line 23)

Q. You indicated, in response to a question from Mr. Duncan, about promotions, and he talked about one promotion in a period from 1975, I believe, until 1979, at least until the acting sergeants were made. Chief Hunter received two promotions during that period, didn't he?

A. From '75 to '79?

Q. Yes, sir.

A. I only know about one.

Q. That was from what to what?

A. Lieutenant to captain.

Q. And then was he later promoted from captain to assistant chief?

A. Well, that's not a promotion. See, you don't receive any more money for that. You're still a captain. And I don't know whether he's assistant chief if I don't read it in the paper. If I go over to the police station, I don't see his name up there on the wall as assistant chief. It only has Assistant Chief Hale; Bert Jenkins as the Public Information Officer; and Mr. Crist as the Business Manager. It doesn't have Chief Hunter's name up there.

Q. Do you know why that's true?

A. I don't have any idea.

Q. Do you know if Chief Hunter has his own private office?

A. I don't think that everybody's in Chief Simpson's office, either, but their names are there on the door.

Q. They're not behind those doors?

A. I don't know that they are—I don't think that they are. I know Chief Simpson's office is there.

THE COURT: All right. Anything further from Mr. Hollingsworth?

MR. DUNCAN: One further question.

REDIRECT EXAMINATION

BY MR. DUNCAN:

Q. Mr. Hollingsworth, do you think that blacks represented in the upper echelon of the Police Department would be a stabilizing factor, not only to the police officers in their attitude, but to the public, also?

A. I believe that people should be promoted in spite of what color they are. And I think that blacks have been not promoted because of their color in the Police Department. And I think that, once you promote people based on their merit rather than dealing with their skin color, that that stabilizes any work force. If you recognize people for their merit and say, "I'm not going to promote this person because they're black," or "I don't want blacks in these positions," I think that's detrimental to any normal society. I don't think the Police Department is any exception.

APPENDIX C

APPENDIX C

PLAINTIFF'S EXHIBIT NO. 1 (PARTIAL)

ANALYSES OF CERTAIN ASPECTS OF HIRING AND PROMOTION IN THE CITY OF LITTLE ROCK POLICE FORCE

The 1970 Census of the Population, Vol. 1, part 5 for Arkansas, gives characteristics of the population of the Little Rock/North Little Rock SMSA that can serve as a starting point in arriving at a percent figure for those in the relevant labor market who are Black. Table 148 in this volume provides the figures for the SMSA by age, sex, race and level of education attained. From Table 148 it is possible to aggregate the figures for individuals between 20 and 44 years of age who have at least a high school education. For this combination of characteristics there is a total of 77,175 individuals; this total includes 8,215 Blacks. The resulting 10.6% of the total who are black provides an indication of the size of this component in this particular selected labor market in 1970.

It is possible to prune the total group identified above to remove categories of individuals who are not, for all practical purposes, available for employment as police officers. For example, it seems plausible to reduce the pool by eliminating the "White collar" workers.

The 1970 Census of the Population, Vol. 1, part 5 for Arkansas, in Table 173, shows the occupation of employed persons in the Little Rock/North Little Rock SMSA broken down by class of worker, race and sex. Of the total number employed in the SMSA, 24.4 percent are either in the Professional/Technical or Managerial/Administrative category. For the present analyses no numerical changes have been made; however, if one were to correct for the presence of these individuals in the proxy population the percentage of Blacks in the remainder would increase since relatively few Blacks would be removed. In 1970, only 10.5 percent of employed Blacks were in the above identified "White collar" categories.

Another way to have the proxy population more accurately reflect the true labor market is to recognize and adjust for the fact that the characteristics of the population change over time. The 1980 Census of Population and Housing (Advance Reports) Arkansas: Final Population and Housing Counts, presents in Table 1 the 1980 population figures for the Little Rock/North Little Rock SMSA which are comparable to figures presented in Table 23 of the 1970 Census of the population, Vol. 1, part 5, for Arkansas. These figures are reproduced in Table A.

TABLE C

RELEVANT LABOR MARKET ANALYSIS
POLICE OFFICER POSITION
1975 - 1980

Year	Tot. No. Police Officers	No. of Black Officers	Percent Black	% Black In Relevant Labor Mkt.	Expected No. Black (Np)	Prob. of No. Blks. hired or Fewer*	Stat. Sig. Deficit?
1975	221	14	6.3%	11.5%	25.4	.008	Yes
1976	217	20(15)	6.9%	11.6%	25.2	.136(.016)	No(Yes)
1977	219	15	6.8%	11.7%	25.6	.013	Yes
1978	206	14	6.8%	11.9%	24.5	.012	Yes
1979	214	16	7.5%	12.0%	25.7	.021	Yes
1980	223	15	6.7%	12.1%	27.0	.007	Yes

*Probabilities were calculated using the percentage of Blacks in Col. 5 as the probability of a "success" in a binomial distribution.

It is my understanding that a promotion selection cycle is administered at least once each year for promotion to Sergeant. The screening produces a composite ranking based on a score which includes the record of a written test and possibly a structured oral test. In addition, there have been scores consisting of an average of the two most recent semi-annual performance ratings, an allowance for seniority, and additional points assigned by the Chief of Police.

The Sergeant's data by race has been made for the years 1975 through 1979 and is summarized here.

In order to examine the results by race for individuals seeking promotion to Sergeant from the grade, Police Officer, a record has been compiled for all such individuals engaged in promotion-to-sergeant examination on one or more occasions from 1975 through 1979.

The detailed compilation of names and test results and promotions is presented in Appendix A. Considering all promotions with the exception of Acting Promotions, only one (1) Black was promoted out of ten (10) seeking promotion during the period, while twenty-five (25) Whites were promoted out of one hundred forty-six (146). The respective promotion rates are 10.0% and 17.1%. A comparison of these rates indicates a violation of the 4/5's rule set forth in the Uniform Guidelines. The detailed compilation of names and test results and promotions is presented in Appendix A.

Inspection of the data in Appendix A also reveals that during the four-year period just prior to 1979 there was one (1) Black promoted out of eight (8) seeking promotion, compared with twenty-five (25) out of one hundred twenty-nine (129) Whites. This produces promotion rates of 12.5% and 19.4% for Blacks and Whites respectively. Again, a violation of the 4/5% rule is present.

With the knowledge of the numbers of individuals identified in Apprndix A it is possible to calculate the average number of attempts at promotion and the averages for success or failure on the written examination. The Data are presented in Table D and suggest that the two groups are similar in average number of passes and failures; therefore, the differential promotion rates computed and shown above are not associated with the presence of a few atypical individuals who appear repeatedly for screening for promotion to Sergeant.

TABLE D

AVERAGE NUMBER OF TESTINGS AND AVERAGE NUMBER OF PASSES AND FAILURES EXAMINATION FOR SERGEANT 1975-1979

	No. of Individuals	Passes	Failures	Total
Blacks	10	16	11	27
(Average)		(1.6)	(1.1)	(2.7)
Whites	146	227	158	385
(Average)		(1.6)	(1.1)	(2.6)
Total	156	243	169	412

TOTAL POPULATION STATE OF ARKANSAS

	1970*	1980**	% Increase
Total all ages	1,923,295	2,285,513	18.8%
20-24	143,039	193,597	35.3%
25-29	115,778	174,177	50.4%
30-34	98,984	161,003	62..7%
35-39	95,981	133,598	39.2%
40-44	101,720	113,777	11.9%
			39.7%

* 1970 U.S. Census-Detailed Characteristics-Arkansas Table 16

**1980 Census of Population Supplementary Reports - Table 2

In conclusion, after examining the City's data dealing with hiring and promotion in the Police Department, I am now in a position to report a summary and some observations which I hope will be useful.

One does not have to have extensive expertise in statistics and demography to conclude that Blacks functioning with the rank of Sergeant are woefully under-represented on the Little Rock police force. No Blacks are now employed at a rank above Sergeant; one is employed as a Sergeant, and two are employed as acting sergeants.

Let me review some of the circumstances that might help account for the current situation. For the five-year period, 1975 to 1979 inclusive, a total of 27 written examinations by Blacks were taken as one of the first steps in being considered for promotion to Sergeant. In some instances, a given individual took the test in more than one of the above years as shown in Appendix A. Sixteen of these examinations were passed for a pass rate of 59.3%. The comparable figures for Whites are 385 exams with 227 passing for a pass rate of 59.0%. I have explored the data in an effort to determine the reasons why larger number of Blacks are not in the ranks of Sergeant and above, even though as a group, they have passed written examinations at a rate that is quite comparable to their White counterparts.

First, however, I shall address a preliminary and basic question that has to do with the very small absolute numbers of Blacks in the system. A partial answer to this preliminary question is seen in the fact that individuals who apply for the Sergeant's promotion screenings come from the currently employed group of Police Officers, and there are relatively few Blacks in this group—presently 14. Why are these numbers so small? The combined police entry data for 1977, 1978 and 1979 show that 67 Blacks and 262 Whites applied for the entry job of Police Officer.

The numbers passing the 1977 to 1979 entry examinations are 27 Blacks and 120 Whites—resulting in pass rates of 40.3%

and 45.8% respectively. Of the 27 Blacks passing the written examination during this period none were hired in 1977 or 1978 and 7 were hired in 1979 for a hire rate of 7/67 or 10.4 for Blacks compared with 53/262 or 20.2 for Whites. In the light of the standards set forth in the Uniform Guidelines on Employee Selection Procedures the City of Little Rock police officer entry level hiring procedures reveal a racially disparate impact.

This is in violation of Title VII unless it can be demonstrated by Defendants that the employment criteria validly measure an applicant's ability to perform as a police officer.

For the years 1972 through 1979 a total of 230 police officers were hired. Of these, 156 out of 207 Whites are still on the force for a retention rate of 75.4%. Of these, 156 out of 207 Whites are still on the force for a retention rate of 75.4% compared with 12 Blacks out of 23 hired for a retention rate of 52.2%. Thus, the smallness of the number of Black police officers can also be accounted for, in part, by the fact that the retention rate for Blacks is only about two-thirds the rate for Whites. This lower retention rate may be because of a perceived atmosphere of racial discrimination experienced by Blacks, or because of other factors; in any event, it is significant and it reduces the number eligible to apply for promotion to Sergeant.

As to my initial question of why there is a very low absolute number of Blacks eligible to apply for promotion to Sergeant, I can state in summary that Blacks are underrepresented in the initial hire applicant pool—which suggests to me that there is a chilling effect on applications for Blacks. It also suggests an absence of positive results from affirmative actions that might encourage minority applications. Furthermore, the actual screening process for these applicants has an adverse impact on Blacks. And finally, for the small number of Blacks hired, there is a further disparate impact on retention as officers on the police force.

I have examined the Affirmative Action Plans for the City of Little Rock from earlier years and find a variety of proposed

actions stated therein that should enhance the recruitment of minority employees in the Police Department. However, for Blacks, the number and percentage figures shown in the Affirmative Action Plan for 1981 can hardly be viewed as an improvement over the number and percentage figures shown in the 1975 report.

APPENDIX D

APPENDIX D

JOINT EXHIBIT NO. 13, PAGE 1

CITY OF LITTLE ROCK
CIVIL SERVICE COMMISSION
ROOM 104 CITY HALL
Little Rock
Arkansas
72201

April 25, 1975

Mrs. Jane Czech, City Clerk
Room 200 - City Hall
Little Rock, Arkansas 72201

Dear Mrs. Czech:

As the result of graded interviews, regarding job related questions and answers, the Civil Service Commission certified the following in order of certification to position of Sergeant. (Certification effective April 25, 1975 at 12:01 A.M.)

SERGEANT

5-19-75	1. Delmerray John WM	13. Keith Rounsavall WM
5-22-75	2. Lamar Bridges WM	14. Verman Wilson WM
7-7-75	3. Grady Anthony BM	15. Paul D. Mahoney WM
8-4-75	4. Bobby L. Thomas WM	16. Ed H. Armstrong WM
9-21-75	5. Jerry L. Best WM	17. J.W. Best WM
9-21-75	6. Paul Plummer WM	18. C.R. Watters WM
9-21-75	7. Timothy P. Daley WM	19. F.R. Van Horn WM
1-19-76	8. Fred W. Hensley WM	20. James A. Long WM
3-8-76	9. John A. Gravett WM	21. Wm. B. Lynch WM
3-14-76	10. Carroll Harrison WM	22. Jimmy C. Hester WM
3-28-76	11. Bobby D. Smith WM	23. Brad Furlow WM
	12. M.H. Potts, Jr. WM	24. J.C. Mandeville WM
		25. R.C. Haggard, Jr. WM

CMA:lc

By _____

cc: Chief Gale Weeks
Miss Ann Crump

APPENDIX E

	Taking Written Exam			:Passing Written Exam			:On Certified List			:Promoted		
	White	Black	Total	:White	Black	Total	:White	Black	Total	:White	Black	Total
1975	81	4	85	: 41	2	43	: 24	1	25	: 10	1	11
1976	79	3	82	: 34	0	34	: 15	0	15	: 4	0	4
1977	79	4	83	: 32	1	33	: 32	1	33	: 0	0	0
1978	84	7	91	: 79	6	85	: 14	1	15	: 11	0	11
1979	62	9	71	: 41	7	48	: 9	3	12	: 6*	2*	8
Tot.	385	27	412	: 277	16	243	: 94	6	100	: 25/31	1/3	26/34

*acting

APPENDIX E
DEFENDANT'S EXHIBIT NO. 7B-3
RELEVANT LABOR MARKET ANALYSIS
POLICE OFFICER POSITION
1975 - 1981

Year	Total No. of Police Officers	No. of Black Police Officers	Percent Black	Probability of Having This No. of Blacks or Fewer*	Significant Deficit**
1975	221	14	6.3%	.009	Yes
1976	211	14	6.6%	.013	Yes
1977	219	15	6.8%	.013	Yes
1978	206	14	6.8%	.013	Yes
1979	214	16	7.5%	.023	Yes
1980	223	15	6.7%	.006	Yes
1981***	235	17	7.2%	.011	Yes

*Probabilities were calculated using the percentage of blacks in the relevant labor market, as stated in the schedule included in the exhibit entitle "Computations Related to Revision of RLM Percentage Based on Information from 1980 Census Survey", as the probability of a "success" in a binomial distribution.

**A statistically significant deficit would occur when the probability of having the number of black police officers shown in column 3, or fewer than this number, is less than .025 (a two-tail test at the 95% level of probability). This procedure is in accordance with the technique approved by the Supreme Court in *Hazelwood School District v. United States*, 433 U.S. 299 (1977), wherein the Court adopted a 2-3 standard deviation test as a measure of statistical significance.

***The data for 1981 are based on a computer print-out generated on October 8, 1981.

APPENDIX F

APPENDIX F

PLAINTIFF'S EXHIBIT NO. 2 (PARTIAL)

POLICE OFFICER (ENTRY) 8-2-79

Grand Totals & Percentages
For Four (4) Police Officer Tests Given: Sept. 13, 14, 15, 1977
May 23, 24, 25, 1978
Jan. 16, 17, 18, 1979
June 19, 20, 21, 1979

1. Taking Exam: Grand Total 329

No.	Code	%
218	White Male	66.26
44	White Female	13.37
45	Black Male	13.68
22	Black Female	6.69
262	White	79.64
67	Black	20.36

2. Passing Exam: Grand Total 147 (147/329 = 44.68%)

No.	Code	%	
98/218	White Male	44.95	
22/44	White Female	50.0	
19/45	Black Male	42.22	
8/22	Black Female	36.36	Total Passing
120/262	White	45.8	120/147 W 81.6%
27/67	Black	40.3	27/147 B 18.37%

APPENDIX G

APPENDIX G
DEFENDANTS' EXHIBIT 7 A-7
NEW HIRE ANALYSIS
POLICE OFFICER POSITION
1972 - 1981

Year	Total No. of Police Officers	No. of Black Police Officers	Percent Black	Probability of Having This No. of Blacks or Fewer*	Significant Deficit**
1972	23	2	8.7%	.554	No
1973	58	6	10.3%	.581	No
1974	40	4	10.0%	.580	No
1975	24	3	12.5%	.754	No
1976	25	1	4.0%	.241	No
1977	7	0	0.0%	.456	No
1978	18	0	0.0%	.133	No
1979	35	7	20.0%	.973	No
1980	39	3	7.7%	.396	No
1981***	8	3	37.52%	.994	****

*Probabilities were calculated using the percentage of blacks in the relevant labor market, 10.6%, as the probability of a "success" in a binomial distribution.

**A statistically significant deficit would occur when the probability of hiring the number of black police officers shown in column 3, or fewer than this number, is less than .025 (a two-tail test at the 95% level of probability). This procedure is in accordance with the technique approved by the Supreme Court in *Hazelwood School District v. United States*, 433 U.S. 299 (1977) wherein the Supreme Court adopted a 2-3 standard deviation test as a measure of statistical significance.

***The data for 1981 are as of 10/08/81.

****The fact that this probability exceeds .975 suggests that the *Overrepresentation* of blacks among newly hired police officers in 1981 cannot be attributable to chance.

APPENDIX H

APPENDIX H
JOINT EXHIBIT NO. 20

City of Little Rock
Office of Personnel

City Hall
Markham at Broadway
Little Rock, Arkansas 72201
371-4588

February 17, 1978

Mrs. Jane Czech, City Clerk
City Hall
Little Rock, Arkansas

Dear Mrs. Czech:

The Civil Service Commission has certified the following candidates to the position of Police Lieutenant; certification effective this date:

WM	1.	Robert W. Pulley 3-13-78
WM	2.	Joe Don Thomas 5-1-78
WM	3.	Jerry Best
BM	4.	Grady Anthony
WM	5.	Paul Plummer
WM	6.	Bobby Thomas
WM	7.	Donald R. Wood
WM	8.	Timothy Daley
WM	9.	James Vandiver
WM	10.	Ronald Gatewood

Yours sincerely,

LITTLE ROCK CIVIL SERVICE COMMISSION

By /s/ Maxine H. Blair
Maxine H. Blair

cc: Chief Walter Simpson

APPENDIX I

APPENDIX I
DEFENDANT'S EXHIBIT NO. 7A-4
RELEVANT LABOR MARKET ANALYSIS
POLICE OFFICER POSITION
1975 - 1981

Year	Total No. of Police Officers	No. of Black Police Officers	Percent Black	Probability of Having This No. of Blacks or Fewer*	Significant Deficit**
1975	221	14	6.3%	.020	Yes
1976	211	14	6.6%	.033	No
1977	219	15	6.8%	.039	No
1978	206	14	6.8%	.042	No
1979	214	16	7.5%	.080	No
1980	223	15	6.7%	.033	No
1981***	235	17	7.2%	.053	No

*Probabilities were calculated using the percentage of blacks in the relevant labor market, 10.6%, as the probability of a "success" in a binominal distribution.

**A statistically significant deficit would occur when the probability of having the number of black police officers shown in column 3, or fewer than this number, is less than .025 (a two-tail test at the 95% level of probability). This procedure is in accordance with the technique approved by the Supreme Court in *Hazelwood School District v. United States*, 433 U.S. 299 (1977), wherein the Court adopted a 2-3 standard deviation test as a measure of statistical significance.

***The data for 1981 are based on a computer print-out generated on October 8, 1981.

APPENDIX J

APPENDIX J
TESTIMONY OF DR. JIM OUTTZ
(T. at 20, Line 12 through 21, Line 20)

Then, when you get past the written with whatever cut-off is set, you are given an oral examination. This oral examination was designed, according to these documents, to evaluate such factors as supervisory ability, initiative, self-confidence, poise. There was never any establishment that these particular characteristics, although they certainly are laudable in the abstract, are necessarily tied to any specific component of a police officer's job at the Little Rock Police Department in terms of what level of it you need and how you would measure it.

Secondly, the panels that were used were allowed complete freedom to determine what constituted proper behavior on each of these dimensions. They were given no standards in terms of what established excellent performance or excellent demonstration of poise, for example. They were to use their own judgment. Certainly, the literature would not indicate that the oral panels conduct oral interviews unless such standards are developed. When such standards are not developed, they are likely to be little more than opinion polls. They certainly would have little bearing in terms of the actual attributes that the people possess.

Another major problem that you have is that the panel members could have knowledge of people's test scores. You take a written test and, if you pass it, you go into the panel. The panel could indeed know your test scores, and could even know your performance appraisal rating. The panel could indeed be biased in its assessment of you by their knowledge of your test score. The two should be kept separate. Do you understand what I'm saying? If I am to evaluate you properly in terms of whatever these dimensions are, I need to evaluate you on these dimensions and no other factors while you an the interview. But I may have knowledge of your test scores, and that might influence the score I give you on the oral test.

ADDITIONAL TESTIMONY OF DR. JIM OUTTZ
(T. 1636, Line 18 through 1639, Line 15)

Q. Okay. Joint Exhibit 16, I believe that's the '78 material.

A. Yes, I have it here.

Q. If you would, tell me what kind of information we can learn from that sheet of paper showing the means and how that is relevant to an analysis of the validity of that promotion system or testing system there.

A. The third page in this exhibit contains some figures as to the mean performance of blacks and whites that had taken the sergeant's examination, with regard to their written test score, the oral test score, seniority, service rating and composite score. My understanding of Dr. Ochman's testimony was that this data had bearing on whether or not these particular components of the system—or whether this system has a racial impact or a racial effect, whether or not blacks perform poorer than whites. And that is incorrect if one is looking to determine adverse impact, to look and say that the written test score means of blacks equal the written test score means of whites, therefore you don't have a problem; and if you look at your oral scores you don't have a problem because you have 54.29 for whites and 54.05 for blacks. That is not probative.

The issue is the rank ordering of candidates once they are on the list. That is, candidates are rank ordered on the basis of their total composite score. And, for 1978, the six blacks who did make it that far, the highest black was twelfth on that list. That is, you would have to have gone through 11 whites to get to the highest scoring black. Therefore, on the limited number of promotions to be made, five or six, you would never promote any blacks. That, then, is probative as to whether or not there is a probability that

blacks will be promoted, not looking at the means of the two groups. You can look at the means of two groups and they can be equal, and when you rank order them one group will be consistently higher than the other, such that the latter group will never get promoted. So, to look at these means is totally irrelevant to the bottom line issue of whether or not there is an adverse impact in this system.

Q. Okay. How does the rank order figure into that?

A. Well, the rank ordering is simply done on the basis of the total composite scores, and a list is then developed. Starting on the tenth page of this exhibit, you see a listing of each candidate by name and the score on each component of the process and the total composite score. The individual's total composite score is what dictates their ranking in terms of eligibility to be promoted.

The issue here is how high blacks are vis-a-vis whites in this rank ordering process in terms of the probability they will get promoted. Also, the issue is whether or not the rank ordering process is legitimate or valid, given the nature of the system itself. This system treats any difference as being meaningful, as I said before. Someone who has an 86.5 is rated higher than someone who has an 85.6. So, that difference is treated as making one slightly better qualified than the other; when, strictly from a technical sense, any time you give a test, if this test were as reliable as any professional test that we could come up with and had reliability of .90, you would still have chance variation in people's scores of two to three points, due to the fact that no test can one hundred per cent accurately measure whatever it is attempting to measure. That doesn't happen. But this data is treated as if this test measures with one hundred per cent accuracy what it is designed to measure, and that simply is not the case.

Now, the factor that caused blacks to be lower in terms of their composite score, the factor happened to be the oral.

That is, their scores, the blacks, were lower on the oral than the—the scores of blacks—you know, the highest performing blacks on the oral, their scores were lower than the highest performing whites. Okay? So that when you figure this into the rank ordering, the whites will be ranked higher than the blacks.

RESPONDENT'S APPENDIX
ADDITIONAL TESTIMONY OF DR. JIM OUTTZ
(T. 1663, Line 6 through 1664, Line 5)

Q. You stated that you had had 105 hours, approximately, of industrial psychology.

A. Correct.

Q. If I can multiply or divide, that is 35 three-hour courses?

A. That is correct.

Q. In industrial psychology?

A. In pursuing my master's degree there was a 45-hour requirement, and in pursuing my Ph.D. there was a 60-hour requirement. And I exceeded those by other courses that I wanted to take.

Q. And all of them were in industrial psychology?

A. They were in pursuit of an industrial psychology degree, and were related to industrial psychology.

Q. But they weren't in industrial psychology; they were related to?

A. If you want to knock out 20 or so of them and say they weren't in industrial psychology, that would be fine.

Q. Twenty courses or 20 hours?

A. Twenty hours.

Q. So, that would get it down to 80 hours in courses in industrial psychology?

A. That's correct.

Q. That's a bunch.

A. Sure is.

TESTIMONY OF DR. ROBERT OSCHMEN
(T. 959, Line 16 through 961, Line 20)

Q. Have you received a degree or specialization from a college and, if so, from what college in industrial psychology?

A. Specifically, no, I have not.

Q. Have not?

A. Have not specifically in industrial psychology, not courses you teach, but what courses have you personally had?

Q. What courses have you had in industrial psychology, not courses you teach, but what courses have you personally had?

A. In graduate school, I had, of course, my specific course work. I had a graduate level course at Hopkins in industrial psychology. I had a graduate level course in—

Q. Just a second. What was that course?

A. What was it?

Q. Yes.

A. It was called industrial psychology.

Q. How many hours?

A. I guess three credit hours.

Q. Okay. If you would, for each one, tell me the name of it and how many hours it was.

A. I had a course in personnel management and that, I guess, was three credit hours.

Q. And was this in a college of business?

A. College of business or business administration.

Q. Personnel management?

A. Personnel management.

Q. Is this a first level personnel management course?

A. Postgraduate level and—

Q. Graduate level personnel management?

A. That's correct.

Q. Okay. In a college of business?

A. That's right.

Q. Okay.

A. I had a statistics course—now, those are the only two relevant specific courses in content at the graduate level. I had relevant courses, but—and, of course, we had seminars, but those two were the only structured courses.

Q. Those are the two—industrial psychology, then, as far as a course in that, you've had one three-hour course?

A. Well, personnel management deals very much with the kind of things that we're dealing with here.

Q. Okay, in your opinion. but, is it slated in the industrial psychology degree?

A. There is no industrial psychology degree per se offered at Hopkins.

Q. Okay. What about other colleges?

A. I'm not sure I understand your question.

Q. Industrial psychology—you're slating personnel management in that field?

A. Oh, yes.

Q. But that is your opinion, is what I'm saying.

A. Well, based on the content of the courses I've had.

Q. And if we include that, then, that's six hours?

A. Yes.

Q. Anything else?

A. Directly, no.

APPENDIX K

APPENDIX K

TESTIMONY OF GRADY ANTHONY
(T. at 1629, Line 13 through 1630, Line 6)
(T. at 1630, Line 19 through 1631, Line 21)

Q. Sergeant Anthony, you are the same Grady Anthony that testified earlier in this case as a plaintiff or intervenor?

A. Yes, sir, that's correct.

Q. We will limit your testimony to one specific area on rebuttal, and that is, do you have any knowledge concerning whether or not captains and members of the oral interview panel have access or have had access to the written scores of the participants at the level of sergeant?

A. Yes, sir. One instance that stands out in my mind was in '79, during the sergeant's examination, or after the written examination. We were in 31, and now retired Chief Hunter was there also, and a number of other officers. They were discussing the written score, who had made what on the written score, and they were computing what would have to be made on the oral interview in order to come out on top or close to the top.

Q. Was this before the oral interview was conducted?

A. Yes, sir.

Q. (Mr. Duncan, continuing) What is 31?

A. That's the office where all the sergeants—that's where they go to get the people together and assignment of the men. It's the main office for the sergeants and shift lieutenants. The shift lieutenants come in that office. Basically, it's for all the sergeants.

Q. Okay. What about as far as generally around the police station? How is written scores handled and how has it been handled in the past?

A. In the past, after the completion of a written examination, all the test scores of the individuals are placed in envelopes, in window-type envelopes, and brought to each shift commander to give out to each applicant.

Q. Have you observed people being asked their score?

A. Yes. To my knowledge, there is no written policy stating that you cannot talk about it. Everybody talks about them. The sergeants talk to the lieutenants about them. The sergeants talk to sergeants, and lieutenants to lieutenants. It's just the going thing. You discuss your score.

Q. What about the top scores?

A. Yes, they discuss the top scores also.

Q. Okay. You testified that there is no written rule or written policy concerning this. Is there any reason that you or any other person would know to not talk about these scores?

A. No, not to my knowledge.

Q. All right.

APPENDIX L

APPENDIX L

TESTIMONY OF CHIEF WALTER "SONNY" SIMPSON
(T. at 1556, Line 25 through 1560, Line 13)

Q. You testified on direct that you didn't have the situation where these five captains had access to these scores. Isn't that right?

A. That is correct.

Q. If I told you that it was commonly discussed in the hall, in front of captains and lieutenants, and that these officers were even asked their scores sometimes, would you controvert that?

A. No, sir, I wouldn't. It's not uncommon for people to discuss things in the Police Department.

Q. What if I told you that at one particular point in time in, I believe, what is called 31—is that the supervisor's office?

A. Yes, sir. It's the whole area back in that side. That's a telephone extension, is what it is. But I have heard these officers refer to it as 31, and I know where they are talking about.

Q. If I told you that a number of police officers, including some of the plaintiffs, were in that area with at least one captain and a lieutenant, and the upper echelon officers were even sitting down and calculating what it would take for these individuals to get promoted or come out high on the list after the oral interview, and this occurred before the oral interview, would you controvert that?

A. I have no knowledge of that taking place, but I'm sure that each one of these officers could take the given scores that we are talking about, if they knew their own and then enlisted the aid, or did it themselves, that they could calculate what they would need. But the individual officers are the ones who are

notified as to what score they have made. Those are in sealed envelopes and are given to the individual officers. They are not given to the supervisors.

Q. Well, let me explore that a little bit. All right. They are put in these sealed envelopes and are sent down to the police station. Is that correct?

A. Yes.

Q. And are they then placed in a box for the various departments?

A. Yes, for the different divisions. Each division has a tray and, unless the division commander happens to be standing there, they are placed in the tray and they pick them up.

Q. So, these written scores are funneled on down into the Police Department and then into the various departments that these men are assigned to and placed in a tray. Is that right?

A. In a sealed envelope, yes.

Q. And then, I would assume—and you correct me if I'm wrong—that the lieutenant or sergeant in charge of that individual passes that out to them, or tells them, "Hey, your score is here." I mean, how do they find out? How do they know to come and get their scores?

A. As they do on all information that comes to them specifically, the information is given to them in the sealed envelope. And they do whatever they want to do with it at that time.

Q. Who gives it to them?

A. Their supervisor.

Q. Their supervisor?

A. It goes through the chain of command to them in a sealed envelope, and it is given to them in a sealed envelope.

Q. Let me ask you this: Are you aware of any rule that says that these exam scores are supposed to be kept secret or that supervisors are not supposed to ask your score, or that they are not to be discussed? Is there any kind of rule like this?

A. Such a rule would be totally unenforceable with police officers, because they are entitled to discuss anything that they have personal knowledge of. If they don't want to discuss their scores, they won't. If they do want to discuss their scores, they will discuss them with anybody they want to.

Q. I understand that, but if I'm a police officer and my lieutenant asks me my score, if I don't have a rule that says I don't have to give it to him, I might be kind of scared not to give it to him.

A. Mr. Duncan, I have no awareness that any supervisor, and no one of these plaintiffs, nor anyone else in the Little Rock Police Department, has ever even suggested to me that they had been asked or intimidated into giving their scores. This is the first I have heard of it here today, if, in fact, that's what you're saying.

Q. I'm not saying that anyone has intimidated anyone. I'm just saying I might feel uncomfortable; but if I had a rule like that, then I would not feel uncomfortable. And I am only asking, is there such a rule?

A. No, sir.

ADDITIONAL TESTIMONY
OF CHIEF WALTER "SONNY" SIMPSON
(T. at 1589, Line 2 through 1590, Line 23)

Q. Okay. This has a section over here for goals for 1981 and goals for 1982, and goals for 1983. Do you see that section?

A. Yes, sir, I do.

Q. Okay. Now, on the left-hand column it has got categories, and one of the categories is Professionals, a, b and c, Police Captain, Police Lieutenant and Business Manager. And let's go over here and look and see how many minority lieutenants or captains that you have in your goals for 1981 first. What do you have in there?

A. Zero in all those categories, as I see it.

Q. So, all the way to 1983 you have as your goal and objective to hire zero black captains or zero black lieutenants in terms of minority representation on the Little Rock police force. That's what this says, isn't it? It says Responsible Official: Walter E. Simpson.

A. That's what it says. I cannot recall ever having seen this document before.

Q. It sure is here.

A. I've seen the affirmative action plan, but I do not recall this document being in any portion of that.

Q. Well, it's in that portion you've got, isn't it?

A. It is, yes.

Q. I'll agree. Well, let's look and see what your goal is for police sergeants, 1981. It's the next category down. In 1981, what was your goal for police sergeants?

A. One.

Q. No, no. 1981?

A. I'm sorry. 1981 is zero.

Q. So, your goal for minority representation for police sergeant in 1981, accoding to this affirmative action program, was zero for minorities and zero for females.

Now, what about 1982?

A. One minority in 1982.

Q. One minority out of 35 sergeants. Okay. Would you tell me what your goal is for 1983?

A. 1983, the goal is one female.

Q. What about males? What about minorities?

A. Zero minority.

Q. Zero, all the way to 1983. This is your affirmative action plan, positive commitment to blacks?

A. No, sir. This is the plan that was put together by the affirmative action officer of the city of Little Rock.

Q. Doesn't it say that the responsible officer is Walter E. Simpson?

A. It does say that, but I did not put this plan together.

APPENDIX M

APPENDIX M
DEFENDANT'S EXHIBIT NO. 7B-7
NEW HIRE ANALYSIS
POLICE OFFICER POSITION
(1972 - 1981)

Year	Total No. of Police Officers	No. of Black Police Officers	Percent Black	Probability of Having This No. of Blacks or Fewer*	Significant Deficit**
1972	23	2	8.7%	.535	No
1973	58	6	10.3%	.537	No
1974	40	4	10.0%	.531	No
1975	24	3	12.5%	.713	No
1976	25	1	04.0%	.201	No
1977	7	0	0.0%	.420	No
1978	18	0	0.0%	.105	No
1979	35	7	20.0%	.949	No
1980	39	3	7.7%	.290	No
1981***	8	3	37.5%	.990	****

*Probabilities were calculated using the percentage of blacks in the relevant labor market, as stated in the schedule included in the exhibit entitle "Computations Related to Revision of RLM Percentage Based on Information from 1980 Census Survey", as the probability of a "success" in a binomial distribution.

**A statistically significant deficit would occur when the probability of hiring the number of black police officers shown in column 3, or fewer than this number, is less than .025 (a two-tail test at the 95% level of probability). This procedure is in accordance with the technique approved by the Supreme Court in *Hazelwood School District v. United States*, 433 U.S. 299 (1977), wherein the Supreme Court adopted a 2-3 standard deviation test as a measure of statistical significance.

***The data for 1981 are as of 10/08/81.

****The fact that this probability exceeds .975 suggests that the overrepresentation of blacks among newly hired police officers in 1981 cannot be attributable to chance.

END OF DOCKET